

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11632 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

SONABEN R VAGHARI WIDOW OF RAMABHAI VIRABHAI VAGHARI

Versus

COMPETENT AUTHORITY AND DEPUTYCOLLECTOR

Appearance:

MR MC BHATT for Petitioners

MR VB GHARANIYA,AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 12/03/98

ORAL JUDGEMENT

1. The petitioners are aggrieved by the orders of the Competent Authority and Appellate Authority holding that deceased Rama Vira was the sole owner in respect of the land in question being survey no. 51/1 admeasuring 6981 sq.mts. and, therefore, allowing one unit of 1500 sq.mts. as retainable land, declaring 6290 sq.mts. as excess vacant land.

2. The other point raised is that survey no. 172/16 is the land with building and not vacant and it is submitted that this aspect has not been taken into consideration.

3. As far as the question of sole ownership is concerned, the authorities have relied on the village form revenue entry no. 609 wherein it is not shown to be family property. The form has been filed showing that the property is a family property and not individual property of the applicant- deceased Rama Vira.

4. During the pendency of this petition, that revenue entry has been cancelled by the Deputy Collector in RTS Appeal No. 69 of 1996. That order is at Annexure I (Page 25). In that proceeding, there was a registered mortgage deed dated 20.4.1943 executed by father of Rama Vira. Therefore, it was contended that in the hands of Rama Vira, it was an ancestral property and, therefore, it was a joint family property. That registered mortgage deed is also produced in this proceeding at Annexure G. In light of that mortgage deed showing that the survey no. 51 was held by the father of Rama Vira, the Deputy Collector came to the conclusion that this was not his sole ownership property, but it was an ancestral property.

5. In light of this, it is clear that the very basis (namely entry no. 608, for passing the orders declaring excess vacant land), has gone and, therefore, the authority is required to reconsider the matter ignoring the entry no. 609 and take a fresh decision in accordance with law.

6. In view of the aforesaid discussion, both the orders of the Competent Authority as well as of the Appellate Authority declaring the land surplus are quashed and set aside and the matter is remanded back to the Competent Authority for a fresh decision in accordance with law. The petitioners will be at liberty to produce such documentary and oral evidence as they may think proper. The authority shall also consider the question of construction on the other piece of land and whether such land is vacant land or not.

Rule is made absolute accordingly with costs.

mhs/-

